

NO JOKES PLEASE

GODFREY COLE *has just finished reading a book that exhorts the judicial officeholder to 'write like a human being'. Here, he explains how.*

Let's start with two, almost certainly incontrovertible, statements. First, it takes many skills to run judicial proceedings effectively, and second, decision-writing causes more worry to more chairmen than any other task that they have to perform.

Training in decision-writing for the beginner almost invariably takes the form of a mantra: identify the issues, make findings of fact, set out the reasons for the decision to include suitable reference to the relevant law, and make a clear decision. The same mantra, presented in a more sophisticated way, frequently continues as the basis of continuation training offered to experienced tribunal chairmen. There can be little doubt that the four-point scheme offers advantages to the novice and to the experienced chairmen; it contains checks and balances and its repetition reinforces consistency.

Decisions, Decisions offers something different: that the emphasis should instead be on style and format. The authors comment at an early stage that the art of judging is made up of many ingredients. If the metaphor is developed, then presumably the style and format of decision-writing is the skill of preparing and then cooking the ingredients. Comments on style are reserved to what might be described as specialist sections: a review of different styles of judgment in different national jurisdictions, approaches to consider when giving oral judgements, advice on when to make jokes (never) and when to lapse into rhyme (as if we would, but don't anyway).

Format is fundamental to the authors because decision-writing is a craft that improves as an individual's techniques develop. To assist the reader, the authors have prepared

what they regard as basic formatting rules. They are:

- Use simple language.
- Avoid old-fashioned expressions and legalese.
- Use a variety of short and long sentences.
- Use connectives, i.e. single words or phrases that foreshadow the thought or idea that is to follow.
- Explain initials and acronyms.

To help the chairman, they have prepared two

appendices. One sets out what they suggest are 'low-fat substitutes' for some of the more weighty prose and phrases that we are all prone to include to give weight or conviction to our decision; the other illustrates useful and suitable connectives.

The authors urge writers to revise. Honing can only lead to improvement, notably in making decisions as concise as possible. They are forceful opponents of prolixity. 'The adoption of a concise style remains a primary objective of judgement-writing – the fewest words possible, as simply as possible.' The authors offer guidelines on how that too can be achieved.

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They suggest that the decision-writer should:

- Avoid reproducing pleadings and extracts from the testimony of witnesses.
- Have the courage to select only the essential facts and discuss solely the real issues.
- Reduce citations.
- Shorten quotations.

Of course those who love their dictating machines, who

do not use voice-activated software and who will not use computers even to make their own corrections and revisions will not be popular with typists when they revise enthusiastically in accordance with the authors' exhortations. This writer, who types all his own decisions and who has been a confirmed revisionist for some while, has no such concerns. The authors acknowledge the problem, in part at any rate: '... a judgment is not a novel, and judges don't have the luxury to put a draft aside for two months or so. Imperatives of justice require a certain speed. However, it is often possible to place the first draft of a judgment in a drawer for 48 hours before revising it. Letting it lie fallow gives enough distancing to make the necessary corrections.'

Is the book an alternative to the mantra? On an introductory level, almost certainly not. For the experienced, though, the answer is probably yes. 'This is a book for judges who are not afraid to write like human beings, for judges who have enough confidence in their knowledge of the law to express it on paper in the same plain language they would use in talking to a neighbour who happens to ask a legal question across the fence on a Saturday afternoon. Not all judges have this degree of confidence; this book is for those who do.'

Decision, Decisions, by LOUISE MAILHOT and JAMES CARNWATH, is published by Editions Yvon Blais (www.editionsyvonblais.com) ISBN 2-89451-237-6